

IN THE
SUPREME COURT OF THE UNITED STATES

CHARLIE LEE STEWART, SR.,--PETITIONER
No. 18-50790 USDC No. 6:17-CV-244

v.

LORIE DAVIS TDCJ-CID --RESPONDENT

MOTION TO FILE OUT-OF-TIME PETITION

Petitioner request that the Clerk of this Court file his out-of-time petition in this Court. Petitioner's did not meet the regular 40 days granted to file after a final judgment of the Circuit Court because of the ongoing pandemic and other circumstances beyond his control. Petitioner was not aware of the additional 60 days that the Court granted because of the pandemic.

Petitioner filed a petition in the Fifth Circuit Court of Appeals in November 2018 seeking a certificate of appealability (COA) after a final judgment in the U.S. District Court. The Fifth Circuit denied Petitioner a COA. Petitioner filed a motion for reconsideration and the Court denied it on December 13, 2019,

Petitioner as a pro-se litigant, misconstrued the Court's order of granting him permission to file a supplemental brief. Petitioner prepared another brief and submitted it to the court in January 2020. The Court's response was:

This Court, on November 12, 2019, subsequently granted leave to file the supplemental brief. The supplemental brief was then filed on the docket as of November 12, 2018.

Petitioner misconstrued this response to mean that the supplemental brief were still pending on the docket. On August 6, 2020, Petitioner wrote the Court requesting a status of the supplemental brief that was filed on the docket as of November 12, 2018. On August 17, 2020, the Fifth Circuit clerk responded to Petitioner's enquiry: The Court's response was:

On November 12, 2019, the Court granted your previously filed motion seeking leave to file supplemental brief in support of your motion for a certificate of appealability (COA). In doing so, the court allowed the filing of the document previously received, the supplemental brief in support. The Court has considered all items allowed in its ruling to deny a COA.

Petitioner apologizes and must beg this Court's indulgence and request that his petition be filed-out-of-time. During the time Petitioner was continuing to seek resolve of his supplemental brief in the Fifth Circuit, he was working toward a petition for certiorari. (February 2020, because of COVID-19 concerns, access to the court started to be limited. The Pack Unit experienced its first COVID-19 death in April 11, 2020. The unit went on a 100% lockdown. Petitioner tested positive and had symptoms that were debilitating at times. The law library area was being used for a quarantine housing for the inmates that tested positive. No one was notified by the law library staff of this Court's order giving an additional 60 days to file a petition.

For the reasons stated above, Petitioner respectfully request that the Clerk of this Court file his out-of-time petition.

UNSWORN DECLARATION

I declare under penalty of perjury that the foregoing statement is true and correct.

Respectfully Submitted

Charlie L Stewart
1897620

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

**LYLE W. CAYCE
CLERK**

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

January 13, 2020

#1897620
Mr. Charlie Lee Stewart Sr.
CID Wallace Pack Prison
2400 Wallace Pack Road
Navasota, TX 77868-0000

No. 18-50790 Charlie Stewart, Sr. v. Lorie Davis, Dir
USDC No. 6:17-CV-244

Dear Mr. Stewart,

We received your document entitled "Supplemental Brief in Support of Petitioner's Original Motion for a COA" along with exhibits and your letter notifying the Court to file this document.

On October 17, 2018 a motion for leave to file a supplement to the brief with COA application was received along with the unfiled supplemental brief. This Court, on November 12, 2019, subsequently granted leave to file the supplemental brief. The supplemental brief was then filed on the docket as of November 12, 2018.

Sincerely,

LYLE W. CAYCE, Clerk
Clardia N. Farrington

By: Claudia N. Farrington, Deputy Clerk
504-310-7706

CC:

Ms. Gretchen Berumen Merenda
Ms. Stephanie Wawrzynski

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

August 17, 2020

#1897620
Mr. Charlie Lee Stewart Sr.
CID Wallace Pack Prison
2400 Wallace Pack Road
Navasota, TX 77868-0000

No. 18-50790 Charlie Stewart, Sr. v. Lorie Davis, Dir
USDC No. 6:17-CV-244

Dear Mr. Stewart,

We are in receipt of your letter of inquiry dated August 6, 2020. Your supplemental brief in support was filed on the docket on November 2, 2019.

On November 12, 2019, the Court granted your previously filed motion seeking leave to file supplemental brief in support of your motion for a certificate of appealability (COA). In doing so, the court allowed the filing of the document previously received, the supplemental brief in support. The court has considered all items allowed in its ruling to deny a COA.

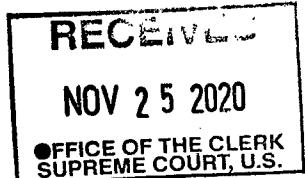
Sincerely,

LYLE W. CAYCE, Clerk

Claudia N. Farrington

By:

Claudia N. Farrington, Deputy Clerk
504-310-7706



IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-50790

CHARLIE LEE STEWART, SR.,

Petitioner - Appellant

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent - Appellee

Appeal from the United States District Court
for the Western District of Texas

Before DENNIS, ELROD, and DUNCAN, Circuit Judges.

PER CURIAM:

A member of this panel previously denied appellant's motion for a certificate of appealability and granted appellant's motion to file a supplemental COA brief. The panel has considered appellant's motion for reconsideration of the denial of a certificate of appealability. IT IS ORDERED that the motion is DENIED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-50790



A True Copy
Certified order issued Nov 12, 2019

CHARLIE LEE STEWART, SR.,

Tyke W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

Petitioner-Appellant

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee

Appeals from the United States District Court
for the Western District of Texas

O R D E R:

Charlie Lee Stewart, Sr., Texas prisoner # 01897620, was convicted by a jury of continuous sexual abuse of a child and sentenced to 60 years of imprisonment. The district court denied his 28 U.S.C. § 2254 petition. He now seeks a certificate of appealability (COA). Stewart's motion for leave to file an amended and supplemental COA brief is GRANTED.

In his COA motion, Stewart contends that the evidence was insufficient to convict him; that he was denied counsel of his choice; and that appointed trial counsel, retained trial counsel, and appellate counsel rendered ineffective assistance. He also contends that he is actually innocent and that the state trial court improperly disqualified retained counsel, interfered in his attorney-client relationship, erred by granting a motion to substitute counsel without a

No. 18-50790

hearing where Stewart was present, and erred by admitting illegally seized and extraneous offense evidence.

To obtain a COA, Stewart must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). This requires him to show that reasonable jurists would find the district court’s assessment of his constitutional claims to be debatable or wrong, or that the issues deserve encouragement to proceed further. *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Stewart has failed to brief his actual innocence claim; thus, it is deemed abandoned. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999). We do not address the claims raised for the first time in this court. *See Henderson v. Cockrell*, 333 F.3d 592, 605 (5th Cir. 2003). Stewart has failed to make the required showing in connection with his remaining claims. Thus, his motion for a COA is DENIED.



STUART KYLE DUNCAN
UNITED STATES CIRCUIT JUDGE

**Additional material
from this filing is
available in the
Clerk's Office.**